

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

Case No. 08-CV-2540 (DC)

vs.

ABLES & HALL BUILDERS, a Kentucky
General Partnership, and

RONNIE ABLES,
DENNIS WADE ABLES, and
JAMES A. HALL,
its General Partners,

Defendants.

**DECLARATION OF JACOB E. MIOTA IN SUPPORT OF
PLAINTIFF U.S. BANK'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

I, Jacob E. Miota, hereby declare under penalty of perjury as follows:

1. I am an attorney with the law firm of Michael Best & Friedrich LLP, counsel to Plaintiff U.S. Bank, NA in this matter. I make this Declaration in opposition to Defendants' Motion to Dismiss.

2. Attached hereto as Exhibit A is a true and correct copy of the Confirmation letter dated July 2, 2004 from U.S. Bank and countersigned by Ables & Hall reiterating the financial terms and procedures in the interest rate swap transaction.

3. Attached hereto as Exhibit B is a true and correct copy of the Amended Confirmation letter dated November 5, 2004 from U.S. Bank and countersigned by Ables & Hall reiterating the financial terms and procedures in the interest swap transaction.

Dated: May 2, 2008.

s/Jacob E. Miota
Jacob E. Miota

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JUL-08-2004 09:18

U S BANK

651 205 3040 P.02/07



July 2, 2004

Ables & Hall Builders, a Kentucky Partnership
Attn: Darlene Ayles
7919 Arnoldtown Road
Louisville, KY 40214
Ph. (502) 935-0438
Fax (502) 935-0438

Re: Swap Transaction between U.S. Bank National Association ("Party A") and Ables & Hall Builders, a Kentucky Partnership ("Party B")

Ladies/Gentlemen:

The purpose of this letter is to set forth the terms and conditions of the Swap transaction entered into between Party A and Party B on the Trade Date referred to below. This letter constitutes a "Confirmation" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swap Dealers Association, Inc.) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. If Party A and Party B are parties to an Interest Rate and Currency Exchange Agreement that sets forth the general terms and conditions applicable to Swap Transactions between said parties (a "Swap Agreement"), this Confirmation supplements, forms a part of, and is subject to, such Swap Agreement. If Party A and Party B are not yet parties to a Swap Agreement, this Confirmation will supplement, form a part of, and be subject to, provisions contained or incorporated by reference in such Swap Agreement upon its execution by Party A and Party B. All provisions contained or incorporated by reference in such Swap Agreement shall govern this Confirmation, except as modified below. In addition, if a Swap Agreement has not been executed, this Confirmation will itself evidence a complete binding agreement between Party A and Party B as to the terms and conditions of the Swap Transaction to which this Confirmation relates.

2. The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

Type of Transaction:	Interest Rate Swap
Notional Amount:	USD 7,893,357.00 Amortizing (see Schedule A)
Trade Date:	July 1, 2004



Effective Date: July 6, 2004

Termination Date: July 1, 2014, subject to adjustment in accordance with the Modified Following Business Day Convention.

Fixed Rate Payer: Party B

Fixed Rate Payer Payment Dates: Beginning August 1, 2004 and thereafter on the 1st day of each month, subject to adjustment in accordance with the Modified Following Business Day Convention.

Fixed Rate: 5.07%

Fixed Rate Day Count Fraction: Act/360

Floating Rate Payer: Party A

Floating Rate Payer Payment Dates: Beginning August 1, 2004 and thereafter on the 1st day of each month, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate for initial Calculation Period: 1.36125%

Floating Rate Option: USD-LIBOR-BBA (Telerate 3750)

Floating Rate Day Count Fraction: Act/360

Designated Maturity: 1 Month

Spread: None

Reset Dates: Beginning August 1, 2004 and thereafter on the 1st day of each month, subject to adjustment in accordance with the Modified Following Business Day Convention.

Reset Business Days: London

Calculation Agent: U.S. Bank National Association

Compounding: Inapplicable

Payments to Fixed Rate Payer: Credit DDA # *(Please Provide)*

Payments to Floating Rate Payer: Debit DDA # *(Please Provide)*

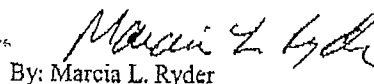
Payment Business Days: New York and London

3. In connection with this Confirmation, the Transaction to which this Confirmation relates and any other documentation relating to the Agreement, each party to this Confirmation represents and acknowledges to the other party that:

- i. it has no recourse and is not relying upon any legal, tax, regulatory, accounting or other advice, statements or recommendations (whether written or oral) of the other party regarding such Transaction, other than the written representations expressly made by that other party in the Agreement and in the Confirmations in respect of such Transaction;
- ii. it has the capacity to evaluate (internally or through independent professional advice) such Transaction (including decisions regarding the appropriateness or suitability of such Transaction) and has made its own decision to enter into such Transaction;
- iii. it understands the terms, conditions and risks of such transaction and is willing to accept those terms and conditions and to assume (financially and otherwise) those risks;
- iv. it is entering into such Transaction as principal and not as agent for any other party;
- v. it acknowledges and agrees that the other party is not acting as a fiduciary or advisor to it in connection with such Transaction;
- vi. it acknowledges that U.S. Bank National Association has advised counterparty to consult its own tax, accounting and legal advisors in connection with this transaction evidenced by this confirmation and that it has done so; and
- vii. it is entering into such Transaction for the purpose of managing its borrowings or investments, hedging its underlying assets or liabilities or in connection with a line of business, and not for purposes of speculation.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

U.S. Bank National Association



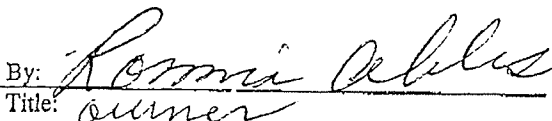
By: Marcia L. Ryder

Title: Assistant Vice President

VMSR

Accepted and confirmed as of the date first above written:

Ables & Hall Builders a Kentucky Partnership

By: 
Title: *owner*

Our Ref: 20303A

07/02/04 7:42 AM

JUL-08-2004 09:20

U S BANK

651 205 3040 P.05/07

Schedule A - Amortization (subject to adjustment in accordance to the Modified Following Business Day convention)

Start Date	Enc. Date (up to but not including)	Notional
07/06/04	08/01/04	\$ 7,893,357
08/01/04	09/01/04	\$ 7,866,858
09/01/04	10/01/04	\$ 7,840,358
10/01/04	11/01/04	\$ 7,813,858
11/01/04	12/01/04	\$ 7,787,358
12/01/04	01/01/05	\$ 7,760,858
01/01/05	02/01/05	\$ 7,734,358
02/01/05	03/01/05	\$ 7,707,858
03/01/05	04/01/05	\$ 7,681,358
04/01/05	05/01/05	\$ 7,654,858
05/01/05	06/01/05	\$ 7,628,358
06/01/05	07/01/05	\$ 7,601,858
07/01/05	08/01/05	\$ 7,575,358
08/01/05	09/01/05	\$ 7,548,858
09/01/05	10/01/05	\$ 7,522,358
10/01/05	11/01/05	\$ 7,495,858
11/01/05	12/01/05	\$ 7,469,358
12/01/05	01/01/06	\$ 7,442,858
01/01/06	02/01/06	\$ 7,416,358
02/01/06	03/01/06	\$ 7,389,858
03/01/06	04/01/06	\$ 7,363,358
04/01/06	05/01/06	\$ 7,336,858
05/01/06	06/01/06	\$ 7,310,358
06/01/06	07/01/06	\$ 7,283,858
07/01/06	08/01/06	\$ 7,257,358
08/01/06	09/01/06	\$ 7,230,858
09/01/06	10/01/06	\$ 7,204,358
10/01/06	11/01/06	\$ 7,177,858
11/01/06	12/01/06	\$ 7,151,358
12/01/06	01/01/07	\$ 7,124,858
01/01/07	02/01/07	\$ 7,098,358
02/01/07	03/01/07	\$ 7,071,858
03/01/07	04/01/07	\$ 7,045,358
04/01/07	05/01/07	\$ 7,018,858
05/01/07	06/01/07	\$ 6,992,358
06/01/07	07/01/07	\$ 6,965,858
07/01/07	08/01/07	\$ 6,939,358
08/01/07	09/01/07	\$ 6,912,858
09/01/07	10/01/07	\$ 6,886,358
10/01/07	11/01/07	\$ 6,859,858
11/01/07	12/01/07	\$ 6,833,358
12/01/07	01/01/08	\$ 6,806,858
01/01/08	02/01/08	\$ 6,780,358
02/01/08	03/01/08	\$ 6,753,858
03/01/08	04/01/08	\$ 6,727,358
04/01/08	05/01/08	\$ 6,700,858
05/01/08	06/01/08	\$ 6,674,358
06/01/08	07/01/08	\$ 6,647,858
07/01/08	08/01/08	\$ 6,621,358
08/01/08	09/01/08	\$ 6,594,858
09/01/08	10/01/08	\$ 6,568,358
10/01/08	11/01/08	\$ 6,541,858
11/01/08	12/01/08	\$ 6,515,358
12/01/08	01/01/09	\$ 6,488,858
01/01/09	02/01/09	\$ 6,462,358
02/01/09	03/01/09	\$ 6,435,858
03/01/09	04/01/09	\$ 6,409,358
04/01/09	05/01/09	\$ 6,382,858
05/01/09	06/01/09	\$ 6,356,358
06/01/09	07/01/09	\$ 6,329,858
07/01/09	08/01/09	\$ 6,303,358

Start Date	End Date (up to but not including)	Notional
08/01/09	09/01/09	\$ 5,397,764
09/01/09	10/01/09	\$ 5,361,264
10/01/09	11/01/09	\$ 5,324,764
11/01/09	12/01/09	\$ 5,288,264
12/01/09	01/01/10	\$ 5,251,764
01/01/10	02/01/10	\$ 5,215,264
02/01/10	03/01/10	\$ 5,178,764
03/01/10	04/01/10	\$ 5,142,264
04/01/10	05/01/10	\$ 5,105,764
05/01/10	06/01/10	\$ 5,069,264
06/01/10	07/01/10	\$ 5,032,764
07/01/10	08/01/10	\$ 4,996,264
08/01/10	09/01/10	\$ 4,957,064
09/01/10	10/01/10	\$ 4,917,864
10/01/10	11/01/10	\$ 4,878,664
11/01/10	12/01/10	\$ 4,839,464
12/01/10	01/01/11	\$ 4,800,264
01/01/11	02/01/11	\$ 4,761,064
02/01/11	03/01/11	\$ 4,721,864
03/01/11	04/01/11	\$ 4,682,664
04/01/11	05/01/11	\$ 4,643,464
05/01/11	06/01/11	\$ 4,604,264
06/01/11	07/01/11	\$ 4,565,064
07/01/11	08/01/11	\$ 4,525,864
08/01/11	09/01/11	\$ 4,483,564
09/01/11	10/01/11	\$ 4,441,264
10/01/11	11/01/11	\$ 4,398,964
11/01/11	12/01/11	\$ 4,356,664
12/01/11	01/01/12	\$ 4,314,364
01/01/12	02/01/12	\$ 4,272,064
02/01/12	03/01/12	\$ 4,229,764
03/01/12	04/01/12	\$ 4,187,464
04/01/12	05/01/12	\$ 4,145,164
05/01/12	06/01/12	\$ 4,102,864
06/01/12	07/01/12	\$ 4,060,564
07/01/12	08/01/12	\$ 4,018,264
08/01/12	09/01/12	\$ 3,972,764
09/01/12	10/01/12	\$ 3,927,264
10/01/12	11/01/12	\$ 3,881,764
11/01/12	12/01/12	\$ 3,836,264
12/01/12	01/01/13	\$ 3,790,764
01/01/13	02/01/13	\$ 3,745,264
02/01/13	03/01/13	\$ 3,699,764
03/01/13	04/01/13	\$ 3,654,264
04/01/13	05/01/13	\$ 3,608,764
05/01/13	06/01/13	\$ 3,563,264
06/01/13	07/01/13	\$ 3,517,764
07/01/13	08/01/13	\$ 3,472,264
08/01/13	09/01/13	\$ 3,423,364
09/01/13	10/01/13	\$ 3,374,464
10/01/13	11/01/13	\$ 3,325,564
11/01/13	12/01/13	\$ 3,276,664
12/01/13	01/01/14	\$ 3,227,764
01/01/14	02/01/14	\$ 3,178,864
02/01/14	03/01/14	\$ 3,129,964
03/01/14	04/01/14	\$ 3,081,064
04/01/14	05/01/14	\$ 3,032,164
05/01/14	06/01/14	\$ 2,983,264
06/01/14	07/01/14	\$ 2,934,364



November 5, 2004

Ables & Hall Builders, a Kentucky Partnership
Attn: Darlene Ables
7919 Arnoldtown Road
Louisville, KY 40214
Ph. (502) 935-0438
Fax (502) 935-0438

Amended

Re: Swap Transaction between U.S. Bank National Association ("Party A") and Ables & Hall Builders, a Kentucky Partnership ("Party B")

Ladies/Gentlemen:

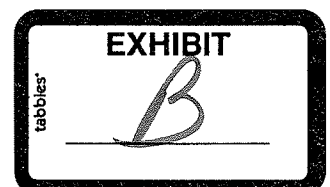
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2. The terms of the particular Swap Transaction to which this Confirmation relates are as follows:

Type of Transaction:	Interest Rate Swap
Notional Amount:	USD 7,893,357.00 Amortizing (see Schedule A)
Trade Date:	July 1, 2004



Effective Date:	July 6, 2004
Termination Date:	July 1, 2014, subject to adjustment in accordance with the Modified Following Business Day Convention.
Fixed Rate Payer:	Party B
Fixed Rate Payer Payment Dates:	Beginning December 8, 2004 and thereafter on the 8th day of each month, subject to adjustment in accordance with the Modified Following Business Day Convention.
Fixed Rate:	5.07%
Fixed Rate Day Count Fraction:	Act/360
Floating Rate Payer:	Party A
Floating Rate Payer Payment Dates	Beginning December 8, 2004 and thereafter on the 8th day of each month, subject to adjustment in accordance with the Modified Following Business Day Convention.
Floating Rate for initial Calculation Period:	1.36125%
Floating Rate Option:	USD-LIBOR-BBA (Telerate 3750)
Floating Rate Day Count Fraction:	Act/360
Designated Maturity:	1 Month
Spread:	None
Reset Dates:	Beginning August 1, 2004 and thereafter on the 1 st day of each month, subject to adjustment in accordance with the Modified Following Business Day Convention.
Reset Business Days:	London
Calculation Agent:	U.S. Bank National Association
Compounding:	Inapplicable
Payments to Fixed Rate Payer:	Credit DDA # <i>(Please Provide)</i>
Payments to Floating Rate Payer:	Debit DDA # <i>(Please Provide)</i>
Payment Business Days:	New York and London

11-09-2004 11:21 ABLES AND HALL 5029350438

PAGE2

3. In connection with this Confirmation, the Transaction to which this Confirmation relates and any other documentation relating to the Agreement, each party to this Confirmation represents and acknowledges to the other party that:

- i. it has no recourse and is not relying upon any legal, tax, regulatory, accounting or other advice, statements or recommendations (whether written or oral) of the other party regarding such Transaction, other than the written representations expressly made by that other party in the Agreement and in the Confirmation in respect of such Transaction;
- ii. it has the capacity to evaluate (internally or through independent professional advice) such Transaction (including decisions regarding the appropriateness or suitability of such Transaction) and has made its own decision to enter into such Transaction;
- iii. it understands the terms, conditions and risks of such transaction and is willing to accept those terms and conditions and to assume (financially and otherwise) those risks;
- iv. it is entering into such Transaction as principal and not as agent for any other party;
- v. it acknowledges and agrees that the other party is not acting as a fiduciary or advisor to it in connection with such Transaction;
- vi. it acknowledges that U.S. Bank National Association has advised counterparty to consult its own tax, accounting and legal advisors in connection with this transaction evidenced by this confirmation and that it has done so; and
- vii. it is entering into such Transaction for the purpose of managing its borrowings or investments, hedging its underlying assets or liabilities or in connection with a line of business, and not for purposes of speculation.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

U.S. Bank National Association

Marcela L. Ryder
By: Marcela L. Ryder
Title: Assistant Vice President

05/12/04
2:30 PM

Accepted and confirmed as of the date first above written:

Ables & Hall Builders, a Kentucky Partnership

By: *Dan Ables*Title: *Bookkeeper*

Our Ref: 20303A

11/5/2004 1:29 PM

Schedule A - Amortization (subject to adjustment in accordance to the Modified Following Business Day convention)

Start Date	End Date (up to but not including)	Notional
07/06/04	08/01/04 \$	7,893,357
08/01/04	09/01/04 \$	7,866,858
09/01/04	10/01/04 \$	7,840,358
10/01/04	11/01/04 \$	7,813,858
11/01/04	12/01/04 \$	7,787,358
12/01/04	01/01/05 \$	7,760,858
01/01/05	02/01/05 \$	7,734,358
02/01/05	03/01/05 \$	7,707,858
03/01/05	04/01/05 \$	7,681,358
04/01/05	05/01/05 \$	7,654,858
05/01/05	06/01/05 \$	7,628,358
06/01/05	07/01/05 \$	7,601,858
07/01/05	08/01/05 \$	7,575,358
08/01/05	09/01/05 \$	7,546,758
09/01/05	10/01/05 \$	7,518,158
10/01/05	11/01/05 \$	7,489,558
11/01/05	12/01/05 \$	7,460,958
12/01/05	01/01/06 \$	7,432,358
01/01/06	02/01/06 \$	7,403,758
02/01/06	03/01/06 \$	7,375,158
03/01/06	04/01/06 \$	7,346,558
04/01/06	05/01/06 \$	7,317,958
05/01/06	06/01/06 \$	7,289,358
06/01/06	07/01/06 \$	7,260,758
07/01/06	08/01/06 \$	7,232,158
08/01/06	09/01/06 \$	7,201,358
09/01/06	10/01/06 \$	7,170,558
10/01/06	11/01/06 \$	7,139,758
11/01/06	12/01/06 \$	7,108,958
12/01/06	01/01/07 \$	7,078,158
01/01/07	02/01/07 \$	7,047,358
02/01/07	03/01/07 \$	7,016,558
03/01/07	04/01/07 \$	6,985,758
04/01/07	05/01/07 \$	6,954,958
05/01/07	06/01/07 \$	6,924,158
06/01/07	07/01/07 \$	6,893,358
07/01/07	08/01/07 \$	6,862,558
08/01/07	09/01/07 \$	6,829,458
09/01/07	10/01/07 \$	6,796,358
10/01/07	11/01/07 \$	6,763,258
11/01/07	12/01/07 \$	6,730,158
12/01/07	01/01/08 \$	6,697,058
01/01/08	02/01/08 \$	6,663,958
02/01/08	03/01/08 \$	6,630,858
03/01/08	04/01/08 \$	6,597,758
04/01/08	05/01/08 \$	6,564,658
05/01/08	06/01/08 \$	6,531,558
06/01/08	07/01/08 \$	6,498,458
07/01/08	08/01/08 \$	6,465,358
08/01/08	09/01/08 \$	6,429,458
09/01/08	10/01/08 \$	6,393,558
10/01/08	11/01/08 \$	6,357,658
11/01/08	12/01/08 \$	6,321,758
12/01/08	01/01/09 \$	6,285,858
01/01/09	02/01/09 \$	6,249,958
02/01/09	03/01/09 \$	6,214,058
03/01/09	04/01/09 \$	6,178,158
04/01/09	05/01/09 \$	6,142,258
05/01/09	06/01/09 \$	6,106,358
06/01/09	07/01/09 \$	6,070,458
07/01/09	08/01/09 \$	6,034,558

Start Date	End Date (up to but not including)	Notional
08/01/09	09/01/09	\$ 5,397,764
09/01/09	10/01/09	\$ 5,361,264
10/01/09	11/01/09	\$ 5,324,764
11/01/09	12/01/09	\$ 5,288,264
12/01/09	01/01/10	\$ 5,251,764
01/01/10	02/01/10	\$ 5,215,264
02/01/10	03/01/10	\$ 5,178,764
03/01/10	04/01/10	\$ 5,142,264
04/01/10	05/01/10	\$ 5,105,764
05/01/10	06/01/10	\$ 5,069,264
06/01/10	07/01/10	\$ 5,032,764
07/01/10	08/01/10	\$ 4,996,264
08/01/10	09/01/10	\$ 4,959,764
09/01/10	10/01/10	\$ 4,923,264
10/01/10	11/01/10	\$ 4,886,764
11/01/10	12/01/10	\$ 4,850,264
12/01/10	01/01/11	\$ 4,813,764
01/01/11	02/01/11	\$ 4,777,264
02/01/11	03/01/11	\$ 4,740,764
03/01/11	04/01/11	\$ 4,704,264
04/01/11	05/01/11	\$ 4,667,764
05/01/11	06/01/11	\$ 4,631,264
06/01/11	07/01/11	\$ 4,594,764
07/01/11	08/01/11	\$ 4,558,264
08/01/11	09/01/11	\$ 4,521,764
09/01/11	10/01/11	\$ 4,485,264
10/01/11	11/01/11	\$ 4,448,764
11/01/11	12/01/11	\$ 4,412,264
12/01/11	01/01/12	\$ 4,375,764
01/01/12	02/01/12	\$ 4,339,264
02/01/12	03/01/12	\$ 4,302,764
03/01/12	04/01/12	\$ 4,266,264
04/01/12	05/01/12	\$ 4,229,764
05/01/12	06/01/12	\$ 4,193,264
06/01/12	07/01/12	\$ 4,156,764
07/01/12	08/01/12	\$ 4,120,264
08/01/12	09/01/12	\$ 4,083,764
09/01/12	10/01/12	\$ 4,047,264
10/01/12	11/01/12	\$ 4,010,764
11/01/12	12/01/12	\$ 3,974,264
12/01/12	01/01/13	\$ 3,937,764
01/01/13	02/01/13	\$ 3,901,264
02/01/13	03/01/13	\$ 3,864,764
03/01/13	04/01/13	\$ 3,828,264
04/01/13	05/01/13	\$ 3,791,764
05/01/13	06/01/13	\$ 3,755,264
06/01/13	07/01/13	\$ 3,718,764
07/01/13	08/01/13	\$ 3,682,264
08/01/13	09/01/13	\$ 3,645,764
09/01/13	10/01/13	\$ 3,609,264
10/01/13	11/01/13	\$ 3,572,764
11/01/13	12/01/13	\$ 3,536,264
12/01/13	01/01/14	\$ 3,500,764
01/01/14	02/01/14	\$ 3,464,264
02/01/14	03/01/14	\$ 3,427,764
03/01/14	04/01/14	\$ 3,391,264
04/01/14	05/01/14	\$ 3,354,764
05/01/14	06/01/14	\$ 3,318,264
06/01/14	07/01/14	\$ 3,281,764